

REMARKS

Claims 1-19 are currently pending. The Office Action has rejected Claims 1-3, 6-8, 13 and 16-19 and objected to Claims 4, 5, 9-12, 14 and 15 as being dependent on a rejected base claim.

Rejections under 35 U.S.C. §103

The Office Action asserts that Claims 1-3, 6-8, 13 and 16-19 are unpatentable over Matheson et al., in view of Fabre et al. The Applicants respectfully disagree.

RE Claims 1-3, 6, 7, 13 and 16

The Office Action suggests that Fabre et al. discloses establishing plural criteria for acceptance of a solution; classifying the scheduling problem; and selecting the criteria for acceptance of a solution as a function of the classification of the scheduling problem and cites column 6, lines 11-16 of Fabre as support.

The Office Action has misconstrued the disclosures of Fabre, especially the cited passage. The cited passage of column 6, lines 11-16 involves creating an initial non empty plan prior to applying the algorithm (Column 3, lines 11-13).

Fabre does not disclose, teach or suggest “ establishing plural criteria for acceptance of a solution; classifying the scheduling problem; or selecting the criteria for acceptance of a solution as a function of the classification of the scheduling problem.

The Applicant has found no such teaching or disclosure in Fabre. Therefore, since each and every element of the Claim is not found in Matheson or Fabre, taken alone or in combination, the Office Action has failed to establish a prima facie case of obviousness. The rejection of Claims 1 and 13 is improper and should be withdrawn.

Likewise, as Claims 2, 3, 6, 7 and 16 depend from Claim 1 or 13, their rejection is improper and should also be withdrawn irrespective of the additional features recited therein.

RE Claim 8

The Office Action purports to reject Claim 8 over Matheson and Fabre, however, the rejection only cites features of Matheson and the Applicant has been unable to find any support for the Claim language in Fabre. Therefore the rejection is improper on its face and should be withdrawn.

Furthermore, while the Office Action assertion that Matheson discloses the energy gives more emphasis to critical resources may be accurate, Matheson does not disclose, teach or suggest emphasizing cost over resource exception for a predetermined initial period of the search phase as required in Claim 8. If the Office Action is relying on other art to provide the teaching, then the art must be disclosed and applied in the rejection. No other art was applied in the rejections and thus the rejection fails to show, teach or suggest the features of Claim 8. Therefore, the Office Action has failed to establish a prima facie case of obviousness and the rejection should be withdrawn.

RE Claim 17

The Office Action purports to reject Claim 17 over Matheson and Fabre, however the rejection only cites features of Matheson and the Applicant has been unable to find any support for the Claim language in Fabre. Therefore the rejection is improper on its face and should be withdrawn.

Furthermore, the Office Action asserts that Matheson discloses the resource exception being weighted as a function of other factors and cites column 21, lines 10-13 as support. Despite the Office Action's continue bald reliance on this passage in response to the Applicant arguments, the Examiner is still wrong. Rather, Matheson discloses "the concept of energy is a weighed combination of resource exceptions, operating cost and goals."

Additionally, Matheson does not disclose, teach or suggest limiting total resource exception time, much less to 1% of the total unopposed trip time. Also the Office Action's reasoning regarding weighting constraints is absurd, constraints as described in Matheson are fixed operating conditions such as available track, trains, distance, sequence etc. and as such cannot be weighted (see column 23, lines 29-67) If the Office action is relying on other art to provide the teaching, then the art must be disclosed and applied in the rejection. No other art was applied in the rejections and thus the rejection fails to show, teach or suggest the features of Claim 17. Therefore, the examiner has

failed to establish a prima facie case of obviousness and thus the rejection should be withdrawn.

RE Claim 18

The Office Action purports to reject Claim 18 over Matheson and Fabre, however the rejection only cites features of Matheson and the Applicant has been unable to find any support for the Claim language in Fabre. Therefore the rejection is improper on its face and should be withdrawn.

Additionally, while the Office Action provides a motivation, the Office Action completely fails to provide a disclosure or teaching to lower the acceptance of a solution in the evaluation of the results of early moves. While Matheson goes on extensively about the need to avoid local minimums and allow for more moves later in the process as pointed out in the Office Action, there is no hint to lowering the acceptance level to achieve this end. If the Office action is relying on other art to provide the teaching, then the art must be disclosed and applied in the rejection. No other art was applied in the rejections and thus the rejection fails to show, teach or suggest the features of Claim 18. Therefore the Office Action has failed to establish a prima facie case of obviousness and thus the rejection should be withdrawn.

RE Claim 19

The Office Action purports to reject Claim 19 over Matheson and Fabre, however the rejection only cites features of Matheson and the Applicant has been unable to find any support for the Claim language in Fabre. Therefore the rejection is improper on its face and should be withdrawn.

Additionally as addressed above, the Office Action assertion that Matheson discloses the resource exception being weighted as a function of other factors is incorrect. Matheson discloses “the concept of energy is a weighed combination of resource exceptions, operating cost and goals” and not visa versa.

The Office Action acknowledges that Matheson does not disclose the features of Claim 19, yet somehow finds them obvious. While providing a target may be a logical progression in the view of the Office Action, but such does not establish a prima facie case. Using such logic the Wright flyer would have been obvious over Icarus’s wax and feather wings. If the Office action is relying on other art to provide the teaching, then the art must be disclosed and applied in the rejection. No other art was applied in the rejections and thus the rejection fails to show, teach or suggest the features of Claim 17. The Office Action has failed to establish a prima facie case of obviousness and thus the rejection should be withdrawn.

Objections

The Office Action objected to Claims 4, 5, 9-12, 14 and 15 as being dependent on a rejected base Claim. In view of the above arguments, the Applicant submits these Claims are not dependent from a rejected base Claim.

CONCLUSION

The Applicant requests withdrawal of the rejections in view of the above arguments. The Applicant requests allowance of Claims 1-19.

Respectfully submitted,



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